



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 29, 2004

Ordinance 15051

Proposed No. 2004-0122.3

Sponsors Constantine

1 AN ORDINANCE relating to critical areas; amending
2 Ordinance 10870, Section 11, and K.C.C. 21A.02.010,
3 Ordinance 10870, Section 19, and K.C.C. 21A.02.090,
4 Ordinance 10870, Section 466, and K.C.C. 21A.24.190,
5 Ordinance 10870, Section 54, as amended, and K.C.C.
6 21A.06.070, Ordinance 10870, Section 70, and K.C.C.
7 21A.06.122, Ordinance 11621, Section 20, and K.C.C.
8 21A.06.182, Ordinance 10870, Section 79, and K.C.C.
9 21A.06.195, Ordinance 10870, Section 80, as amended,
10 and K.C.C. 21A.06.200, Ordinance 11481, Section 1, and
11 K.C.C. 20.70.010, Ordinance 10870, Section 92, and
12 K.C.C. 21A.06.260, Ordinance 10870, Section 96, and
13 K.C.C. 21A.06.280, Ordinance 11621, Section 21, and
14 K.C.C. 21A.06.392, Ordinance 10870, Section 120, and
15 K.C.C. 21A.06.400, Ordinance 10870, Section 122, and
16 K.C.C. 21A.06.410, Ordinance 10870, Section 123, and
17 K.C.C. 21A.06.415, Ordinance 10870, Section 131, and

18 K.C.C. 21A.06.455, Ordinance 10870, Section 134, and
19 K.C.C. 21A.06.470, Ordinance 10870, Section 135, as
20 amended, and K.C.C. 21A.06.475, Ordinance 10870,
21 Section 136, as amended, and K.C.C. 21A.06.480,
22 Ordinance 10870, Section 137, as amended, and K.C.C.
23 21A.06.485, Ordinance 10870, Section 138, as amended,
24 and K.C.C. 21A.06.490, Ordinance 10870, Section 140,
25 and K.C.C. 21A.06.500, Ordinance 10870, Section 141,
26 and K.C.C. 21A.06.505, Ordinance 10870, Section 144,
27 and K.C.C. 21A.06.520, Ordinance 10870, Section 149,
28 and K.C.C. 21A.06.545, Ordinance 10870, Section 165,
29 and K.C.C. 21A.06.625, Ordinance 10870, Section 176,
30 and K.C.C. 21A.06.680, Ordinance 10870, Section 190,
31 and K.C.C. 21A.06.750, Ordinance 11621, Section 26, and
32 K.C.C. 21A.06.751, Ordinance 10870, Section 198, and
33 K.C.C. 21A.06.790, Ordinance 11555, Section 2, as
34 amended, and K.C.C. 21A.06.797, Ordinance 10870,
35 Section 203, and K.C.C. 21A.06.815, Ordinance 10870,
36 Section 205, and K.C.C. 21A.06.825, Ordinance 10870,
37 Section 240, and K.C.C. 21A.06.1000, Ordinance 10870,
38 Section 243, and K.C.C. 21A.06.1015, Ordinance 10870,
39 Section 249, and K.C.C. 21A.06.1045, Ordinance 11555,
40 Section 1, and K.C.C. 21A.06.1172, Ordinance 10870,

41 Section 286, and K.C.C. 21A.06.1230, Ordinance 10870,
42 Section 288, and K.C.C. 21A.06.1240, Ordinance 10870,
43 Section 293, and K.C.C. 21A.06.1265, Ordinance 10870,
44 Section 294, and K.C.C. 21A.06.1270, Ordinance 10870,
45 Section 310, and K.C.C. 21A.06.1350, Ordinance 10870,
46 Section 314, and K.C.C. 21A.06.1370, Ordinance 10870,
47 Section 318, and K.C.C. 21A.06.1390, Ordinance 10870,
48 Section 319, as amended, and K.C.C. 21A.06.1395,
49 Ordinance 10870, Section 320, and K.C.C. 21A.06.1400,
50 Ordinance 10870, Section 323, as amended, and K.C.C.
51 21A.06.1415, Ordinance 10870, Section 340, as amended,
52 and K.C.C. 21A.12.030, Ordinance 10870, Section 342, as
53 amended, and K.C.C. 21A.12.050, Ordinance 10870,
54 Section 345, as amended, and K.C.C. 21A.12.080,
55 Ordinance 10870, Section 364, as amended, and K.C.C.
56 21A.14.040, Ordinance 10870, Section 378, as amended,
57 and K.C.C. 21A.14.180, Ordinance 10870, Section 448, as
58 amended, and K.C.C. 21A.24.010, Ordinance 10870,
59 Section 449, and K.C.C. 21A.24.020, Ordinance 10870,
60 Section 450, and K.C.C. 21A.24.030, Ordinance 10870,
61 Section 451, and K.C.C. 21A.24.040, Ordinance 10870,
62 Section 454, as amended, and K.C.C. 21A.24.070,
63 Ordinance 10870, Section 456, and K.C.C. 21A.24.090,

64 Ordinance 10870, Section 457, as amended, and K.C.C.
65 21A.24.100, Ordinance 10870, Section 458, and K.C.C.
66 21A.24.110, Ordinance 10870, Section 460, and K.C.C.
67 21A.24.130, Ordinance 10870, Section 463, and K.C.C.
68 21A.24.160, Ordinance 10870, Section 464, as amended,
69 and K.C.C. 21A.24.170, Ordinance 10870, Section 465, as
70 amended, and K.C.C. 21A.24.180, Ordinance 10870,
71 Section 467, and K.C.C. 21A.24.200, Ordinance 10870,
72 Section 468, as amended, and K.C.C. 21A.24.210,
73 Ordinance 10870, Section 469, and K.C.C. 21A.24.220,
74 Ordinance 10870, Section 470, and K.C.C. 21A.24.230,
75 Ordinance 10870, Section 471, as amended, and K.C.C.
76 21A.24.240, Ordinance 10870, Section 472, and K.C.C.
77 21A.24.250, Ordinance 10870, Section 473, and K.C.C.
78 21A.24.260, Ordinance 10870, Section 474, and K.C.C.
79 21A.24.270, Ordinance 11621, Section 75, and K.C.C.
80 21A.24.275, Ordinance 10870, Section 475, as amended,
81 and K.C.C. 21A.24.280, Ordinance 10870, Section 476, and
82 K.C.C. 21A.24.290, Ordinance 10870, Section 477, and
83 K.C.C. 21A.24.300, Ordinance 10870, Section 478, as
84 amended, and K.C.C. 21A.24.310, Ordinance 11481,
85 Sections 2, and K.C.C. 20.70.020, Ordinance 11481,
86 Sections 3 and 5, and K.C.C. 20.70.030, Ordinance 11481,

87 Sections 2, and K.C.C. 20.70.060, Ordinance 10870, Section
88 481, as amended, and K.C.C. 21A.24.340, Ordinance 11621,
89 Section 72, as amended, and K.C.C. 21A.24.345, Ordinance
90 10870, Section 485, and K.C.C. 21A.24.380, Ordinance
91 11621, Section 52, as amended, and K.C.C. 21A.14.260,
92 Ordinance 11621, Section 53, and K.C.C. 21A.14.270,
93 Ordinance 10870, Section 486, and K.C.C. 21A.24.390,
94 Ordinance 10870, Section 487, and K.C.C. 21A.24.400,
95 Ordinance 10870, Section 488, and K.C.C. 21A.24.410,
96 Ordinance 10870, Section 489, and K.C.C. 21A.24.420,
97 Ordinance 14187, Section 1, and K.C.C. 21A.24.500,
98 Ordinance 14187, Section 2, and K.C.C. 21A.24.510,
99 Ordinance 10870, Section 515, and K.C.C. 21A.28.050,
100 Ordinance 10870, Section 532, as amended, and K.C.C.
101 21A.30.040, Ordinance 11168 Section 3, as amended, and
102 K.C.C. 21A.30.045, Ordinance 10870, Section 534, as
103 amended, and K.C.C. 21A.30.060, Ordinance 10870,
104 Section 577, as amended, and K.C.C. 21A.38.040,
105 Ordinance 10870, Section 611, and K.C.C. 21A.42.030,
106 Ordinance 10870, Section 612, as amended, and K.C.C.
107 21A.42.040, Ordinance 10870, Section 616, as amended,
108 and K.C.C. 21A.42.080, Ordinance 10870, Section 618, as
109 amended, and K.C.C. 21A.42.100, Ordinance 10870,

110 Section 624, as amended, and K.C.C. 21A.44.030 and
111 Ordinance 10870, Section 630, and K.C.C. 21A.50.020,
112 adding new sections to K.C.C. chapter 21A.06, adding new
113 sections to K.C.C. chapter 21A.24, adding new sections to
114 K.C.C. chapter 21A.50, recodifying 21A.24.190,
115 20.70.010, 21A.06.1415, 20.70.020, 20.70.030, 20.70.040,
116 20.70.060, 21A.14.260 and 21A.14.270 and repealing
117 Ordinance 10870, Section 62, and K.C.C. 21A.06.110,
118 Ordinance 10870, Section 150, and K.C.C. 21A.06.550,
119 Ordinance 10870, Section 221, and K.C.C. 21A.06.905,
120 Ordinance 10870, Section 235, and K.C.C. 21A.06.975,
121 Ordinance 10870, Section 253, and K.C.C. 21A.06.1065,
122 Ordinance 10870, Section 322, as amended, and K.C.C.
123 21A.06.1410, Ordinance 10870, Section 452, as amended,
124 and K.C.C. 21A.24.050, Ordinance 10870, Section 453, and
125 K.C.C. 21A.24.060, Ordinance 11621, Section 70, as
126 amended, and K.C.C. 21A.24.075, Ordinance 10870,
127 Section 455, as amended, and K.C.C. 21A.24.080,
128 Ordinance 10870, Section 459, and K.C.C. 21A.24.120,
129 Ordinance 10870, Section 462, and K.C.C. 21A.24.150,
130 Ordinance 11481, Section 6, and K.C.C. 20.70.050,
131 Ordinance 11481, Section 8, and K.C.C. 20.70.200,
132 Ordinance 10870, Section 479, and K.C.C. 21A.24.320,

133 Ordinance 10870, Section 480, as amended, and K.C.C.
134 21A.24.330, Ordinance 10870, Section 482, and K.C.C.
135 21A.24.350, Ordinance 10870, Section 483, as amended,
136 and K.C.C. 21A.24.360, Ordinance 10870, Section 484, as
137 amended, and K.C.C. 21A.24.370, Ordinance 10870,
138 Section 609, and K.C.C. 21A.42.010, Ordinance 10870,
139 Section 610, and K.C.C. 21A.42.020 and Ordinance 10870,
140 Section 620, and K.C.C. 21A.42.120.

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STATEMENT OF FACTS:

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1. Regarding Growth Management Act requirements:

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a. The state Growth Management Act ("GMA") requires the adoption of
146 development regulations that protect the functions and values of critical
147 areas, including wetland, fish and wildlife habitat conservation areas,
148 critical groundwater recharge areas, frequently flooded areas and
149 geologically hazardous areas;

150

b. RCW 36.70A.172 requires local governments to include the best
151 available science ("BAS") in developing policies and development
152 regulations to protect the functions and values of critical areas, and to give
153 special consideration to conservation or protection measures necessary to
154 preserve or enhance anadromous fisheries;

155 c. The GMA requires all local government to designate and protect
156 resource lands, including agricultural lands. The GMA requires local
157 governments planning under GMA to accommodate future population
158 growth as forecasted by the office of financial management and requires
159 counties to include a rural element in their comprehensive plans. King
160 County is required to plan under the GMA and has adopted a
161 comprehensive plan that includes all of the required elements under GMA.

162 2. Regarding the King County Comprehensive Plan:

163 a. King County's efforts to accommodate growth and to protect critical
164 areas, resource lands and rural lands are guided by Countywide Planning
165 Policies and the King County Comprehensive Plan ("the Comprehensive
166 Plan"). The council recently completed a four-year update of the
167 Comprehensive Plan with the adoption of updated policies and
168 implementing ordinances on September 27, 2004;

169 b. The Comprehensive Plan policies call for a mixture of regulations and
170 incentives to be used to protect the natural environment and manage water
171 resources;

172 c. The Comprehensive Plan policies direct that agriculture should be the
173 principle use within the agricultural production districts. The
174 Comprehensive Plan also encourages agriculture on prime farmlands
175 located outside the agricultural production districts using tools such as
176 permit exemptions for activities complying with best management
177 practices; and

178 d. The Comprehensive Plan encourages farming and forestry throughout
179 the rural area. The rural policies call for support of forestry through
180 landowner incentive programs, technical assistance, permit assistance,
181 regulatory actions and education. The rural policies encourage farming in
182 the rural area through tax credits, expedited permit review and permit
183 exceptions for activities complying with best management practices.

184 3. Regarding the relationship of this critical areas ordinance to other
185 regulations, projects and programs:

186 a. King County uses a combination of regulatory and nonregulatory
187 approaches to protect the functions and values of critical areas.
188 Regulatory approaches include low-density zoning in significantly
189 environmentally constrained areas, limits on total impervious surface,
190 stormwater controls and clearing and grading regulations.

191 b. Nonregulatory approaches to protecting critical areas include: current
192 use taxation programs that encourage protection of long-term forest cover,
193 open space and critical areas; habitat restoration projects; habitat
194 acquisition projects; and public education on land and water stewardship
195 topics;

196 c. The standards in this critical areas ordinance for protection of
197 wetlands, aquatic areas and wildlife areas work in tandem with landscape-
198 level standards for stormwater management, water quality and clearing
199 and grading;

200 d. This critical areas ordinance includes provisions for site-specific
201 application of wetland and stream buffers, best management practices and
202 alterations conditions through rural stewardship plans and farm plans.
203 Buffer modifications through rural stewardship plans are guided by the
204 Basins and Shorelines Conditions map that is a substantive attachment to
205 this critical areas ordinance. The Basin and Shorelines Conditions map is
206 based on criteria that consider presence and habitat use by anadromous
207 fish;

208 e. The stormwater ordinance (Ordinance 15052) being adopted in
209 conjunction with this critical areas ordinance incorporates standards
210 consistent with the Washington state Department of Ecology's Stormwater
211 Management Manual for Western Washington and requires a wider range
212 of development activities to undergo drainage review and to mitigate
213 impacts of new development and redevelopment on surface water runoff.
214 The stormwater ordinance places a strong emphasis on flow control best
215 management practices that disperse and infiltrate runoff on-site. The
216 stormwater ordinance also extends water quality standards to residential
217 activities, including car washing and use of pesticides and herbicides; and

218 f. The clearing and grading ordinance (Ordinance 15053) being adopted
219 in conjunction with this critical areas ordinance applies seasonal clearing
220 limits throughout unincorporated King County to help prevent
221 sedimentation of streams and other aquatic areas. The clearing and
222 grading ordinance also applies clearing limits to rural zoned properties

223 ranging from thirty-five to fifty percent depending on lot size. Retention
224 of forest cover helps to preserve the ability of soils and forest cover to
225 capture and slowly release or infiltrate rainwater. Retention of forest
226 cover augments the protection provided by buffers for wetlands, aquatic
227 areas, and fish and wildlife conservation areas. The clearing limits are
228 structured in a way that encourages forest cover to be retained in the
229 vicinity of other critical areas, and to lay out subdivisions in a manner that
230 minimizes fragmentation of wildlife habitat.

231 4. Regarding watershed approaches:

232 a. All parts of watershed need to play a role in protecting critical areas,
233 whether urban or rural. King County's past investments in habitat
234 protection and restoration on a watershed basis have been guided by
235 detailed basin plans, the Waterways 2000 program and, more recently,
236 water resource inventory area plans being prepared for the Green-
237 Duwamish, Cedar-Lake Washington, Snohomish-Snoqualmie and
238 Puyallup-White river basins. These cooperative planning processes are
239 also used to allocate funding from the state Salmon Recovery Funding
240 Board and King Conservation District; and

241 b. Water resources inventory area plans, expected to be completed in
242 2005, will identify specific priorities for habitat investments, monitoring,
243 and adaptive management needs at a watershed scale. These plans will
244 help guide future habitat protection actions in both urban and rural King
245 County, and are expected to enhance the county's ability to achieve no net

246 loss of wetlands at the basin scale and to meet GMA direction to give
247 special consideration to conservation or protection measures necessary to
248 preserve or enhance anadromous fisheries.

249 5. Regarding BAS review:

250 a. The BAS review and assessment carried out by King County for
251 consideration of these ordinances is found in "BAS Volume I -- A Review
252 of Science Literature" and "BAS Volume II -- Assessment of Proposed
253 Ordinances" dated February 2004. The Growth Management and
254 Unincorporated Areas Committee was also provided with an overview of
255 the BAS review conducted by the Washington state Department of
256 Ecology ("Ecology") in support of Ecology's revised wetland rating
257 system and guidance for wetland buffers and mitigation ratios.

258 b. The approach for development of King County's Best Available
259 Science Volumes I and II was developed based on guidance in WAC 365-
260 195-900. Appendix C to BAS Volume I summarizes the qualifications of
261 the authors of the report and lists the scientific experts that provided peer
262 review of issue papers that served as the basis for BAS Volumes I and II;

263 c. Chapter 6 of BAS Volume II summarizes departures from BAS in the
264 original executive proposal, and includes risk assessment summaries for
265 aquatic areas, wildlife areas and wetlands. The summaries indicate that
266 most of the proposed regulations fall within the range of BAS. The
267 assessment also noted five departures from BAS, including wetland
268 buffers in urban areas, treatment of aquatic and wetland buffers in

269 agricultural areas, and buffers for Type O streams. BAS Volume II
270 provides a detailed discussion of these departures the associated risks to
271 critical area functions and values in accordance with WAC 365-195-115;

272 d. BAS Volume II noted that the executive-proposed buffer widths for
273 wetlands in urban areas departed from BAS recommendations for
274 protecting wetland functions and values;

275 e. The council has amended the executive-proposed buffer widths for
276 both urban and rural wetland buffers modeled on guidance from Ecology.
277 The standard buffer widths for urban areas are based on consideration of
278 wetland classification and wetland functions, and reflect the higher
279 intensity and higher density land uses found in urban King County. The
280 buffer widths for urban areas include provisions for increased buffer
281 widths or protection of a vegetated corridor in cases where wetlands with
282 moderate or high wildlife functions are located within three-hundred feet
283 of a priority habitat. The standard buffer widths may be decreased by
284 twenty-five feet in cases where additional steps are taken to mitigate
285 development impacts. The standard buffer widths in rural areas are
286 determined based on consideration of wetland classification, wildlife
287 functions and surrounding land use intensity. The buffer widths for rural
288 areas may be reduced when best management practices are applied
289 through a rural stewardship plan or farm plan. A review of these wetland
290 buffers relative to the findings of BAS Volumes I and II has concluded

291 that the buffer widths for both urban and rural areas fall within the range
292 of BAS;

293 f. The council has amended the critical areas ordinance to require the use
294 of Ecology's 2004 Wetland Rating System for Western Washington. The
295 2004 Wetland Rating System uses an assessment of multiple wetland
296 functions to determine wetland classification. This provides greater
297 assurance that wetland functions and values will be protected through
298 buffers and mitigation ratios based on these classifications;

299 g. The council has amended wetland mitigation ratios to be consistent
300 with Department of Ecology guidance to improve regulatory consistency
301 and to provide greater assurance of no net loss of wetland functions and
302 values;

303 h. BAS Volume II noted a departure from BAS with respect to buffers
304 for Type O streams, and protection of microclimate functions for Type N
305 streams. Type O streams are expected to be limited in number, area and
306 distribution, and have no fish present. Landscape-level protection for
307 aquatic area functions and values is enhanced through the application of
308 clearing limits and stricter stormwater standards; and

309 i. BAS Volume II noted a departure from BAS in treatment of buffers in
310 agricultural areas. Land suitable for farming is an irreplaceable natural
311 resource. Since 1959, almost sixty percent of the county's prime
312 agricultural land has been lost to urban and suburban development. Of
313 one hundred thousand acres available for farming forty years ago, only

314 forty-two thousand remain in agriculture. Since 1979, the county has
315 protected more than twelve thousand eight hundred acres of farmland
316 through purchase of development rights under the farmlands preservation
317 program. In 1985, the county established agricultural production districts
318 with large lot zoning and identified agriculture as the preferred use.
319 Through purchase of development rights, designation of agricultural
320 production districts, and adoption of comprehensive plan policies directing
321 protection of agricultural lands, the amount of agricultural land has largely
322 stabilized. Much of King County's prime agricultural land is found in
323 floodplains and adjacent to rivers, streams and wetlands. Prohibitions on
324 agricultural uses within aquatic and wetland buffers would take large areas
325 of the agricultural production districts out of agricultural use, contrary to
326 GMA mandates, Comprehensive Plan Policies and past public investments
327 in purchase of development rights. The agricultural provisions in the
328 critical areas ordinance were developed in close coordination with the
329 King County agriculture commission and provide for continued
330 agricultural uses within buffers and expansions of agricultural uses into
331 previously cleared areas with a farm plan. Risk to aquatic area and
332 wetland functions and values is reduced through site-specific best
333 management practices, including vegetated filter strips, winter cover
334 crops, livestock fencing and other best management practices
335 recommended by the Natural Resources Conservation Service and the
336 King Conservation District; and

